

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LASHAUD WELCOME,

Defendant-Appellant.

UNPUBLISHED

December 20, 2011

No. 298792

Wayne Circuit Court

LC No. 09-019914-FH

Before: SHAPIRO, P.J., and WHITBECK and GLEICHER, JJ.

PER CURIAM.

Wayne Circuit Judge Linda Parker, sitting as the trier of fact, convicted defendant of misconduct in office, a common-law offense, MCL 750.505, arising from his falsification of official records while serving as a Detroit police officer. Judge Parker sentenced defendant to three years of probation. The prosecution presented ample evidence to support this verdict and we affirm.

Defendant's conviction arose from the falsified description of a "stop and search" in his official police activity log and Crisnet police report, an electronic arrest record. The reports were prepared by defendant and stated that he and his partner, Ruffus Stewart,¹ instigated a traffic stop of Megale Redd's vehicle because they witnessed him driving without wearing a seatbelt. Defendant asserted that Stewart pulled behind Redd's vehicle and approached the driver's side door. Stewart then ordered Redd to exit the car, advising him that he was under arrest. The reports assert that Stewart searched Redd's person and found a gun and a small bag of marijuana.

The prosecution presented the testimony of Redd and his two passengers as well as gas station video surveillance evidence. The video reveals that Redd drove into the gas station, parked at a pump and walked into the station's convenience store before the patrol vehicle arrived on the scene. The officers pulled in front of Redd's car, blocking its path. One of the officers approached Redd as he walked through the parking lot toward his car. The officer conducted a search of Redd's person but found nothing. The officer then searched passenger

¹ Stewart also faced criminal charges for his role in this incident but he entered a plea agreement before trial.

Danangelo McGilary, again finding nothing. Finally, the officer searched passenger Sherrod Redd, found a small bag of marijuana and threw it in the car. The officers then conducted a search of the vehicle during which they found a handgun under the car hood. Despite that Sherrod had possessed the marijuana, the officers placed only Redd under arrest for possession of a controlled substance and carrying a concealed weapon. Redd spent four days in jail before these charges were dismissed.

Defendant now challenges the sufficiency of the evidence supporting his misconduct in office conviction. We review such claims de novo. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). We must view the evidence in the light most favorable to the prosecutor and determine if a rational trier of fact could find that the prosecution proved the essential elements of the offense beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

“At common law, misconduct in office was defined as corrupt behavior by an officer in the exercise of the duties of his office or while acting under color of his office.” *People v Perkins*, 468 Mich 448, 456; 662 NW2d 727 (2003) (internal quotation omitted). An officer may face conviction of misconduct in office “(1) for committing any act which is itself wrongful, misfeasance, (2) for committing a lawful act in a wrongful manner, misfeasance, or (3) for failing to perform any act that the duties of the office require of the officer, nonfeasance.” *Id.* If the prosecution alleges that the officer committed malfeasance or misfeasance, the prosecution must show that he acted “with a corrupt intent, i.e., with a sense of depravity, perversion or taint.” *Id.* (internal quotation omitted). The prosecution must further show that the officer’s “wrongdoing” arose from or affected his performance of official duties. *Id.*

Here, defendant engaged in misfeasance; he engaged in a lawful activity (preparing reports and activity logs to document a search and arrest) but did so in a wrongful manner (falsifying pertinent details). Defendant reported that he arrested Redd after a traffic stop during which he discovered a weapon and narcotics on Redd’s person. The video surveillance evidence, however, clearly reveals that the officers did not effectuate a traffic stop. Rather, Redd’s vehicle was already parked at the gas station when the officers approached. The officers stopped Redd as he walked across the parking lot to the car. The video evidence also clearly reveals that the officers did not uncover any evidence while searching Redd’s person. The marijuana was found on Redd’s passenger and the gun was found under the hood of the vehicle.

This evidence was sufficient to establish the necessary “corrupt intent.” Defendant claims simply to have forgotten certain details between the arrest and the end of his shift when he prepared the reports. Yet, the deviations from reality in defendant’s reports represent significant details. The prosecution’s evidence tends to show that defendant and Stewart lacked probable cause or reasonable suspicion to stop and search Redd or the vehicle and therefore falsified details to justify their actions. The purposeful and devious violation of a citizen’s basic Fourth Amendment rights certainly qualifies as “corrupt intent.”

The prosecution also amply supported that defendant’s wrongful acts arose from or affected his performance of official duties. Detroit police sergeant David Torres testified that an arresting officer is required to document the arrest in the department’s computerized records system-Crisnet. As the passenger in the patrol car, defendant was also tasked with preparing a

log to document his and Stewart's activities throughout the shift. Sergeant Torres testified to the obvious fact that the police department expected officers to prepare accurate reports. Defendant's wrongful conduct infected the performance of his official record-keeping duties.

The prosecution presented sufficient evidence to support that defendant personally prepared the falsified Crisnet report and activity log. Sergeant Torres testified that Detroit police officers must use a department computer and enter a confidential pension number in order to submit arrest reports on the Crisnet system. System administrators have access to confidential information such as passwords to determine who submitted a report. The Crisnet report documenting Redd's arrest was generated by someone using defendant's personal and confidential pension number, supporting the fact that defendant submitted the report himself. Defendant also signed the activity log and bore the responsibility to create that log as the passenger in the patrol car. This was sufficient for the trier of fact to conclude that defendant personally prepared and submitted the reports.

Moreover, we reject defendant's claim that his conviction cannot be supported by Sergeant Torres's testimony because he was not qualified as an expert witness. A police officer may provide lay testimony regarding his observations in a criminal matter and his "opinion formed as a result of those observations." *People v Oliver*, 170 Mich App 38, 50; 427 NW2d 898 (1988). An officer need only be qualified as an expert when his testimony depends on scientific, technical or other specialized knowledge. *Id.* Sergeant Torres testified based upon facts he uncovered during his personal investigation of the case. He applied that information to his first-hand knowledge, as an active police officer, of Detroit Police Department procedures for creating and submitting reports. This information was not dependant on scientific, technical or other specialized knowledge and an expert witness would have been superfluous.

Affirmed.

/s/ Douglas B. Shapiro
/s/ William C. Whitbeck
/s/ Elizabeth L. Gleicher